

Internal Revenue Service

memorandum

CC:TL-N-8716-88

CLRobertson, Jr.

date: **OCT 31 1988**

to: District Counsel, Houston CC:HOU
Attention: Melanie Urban, Esq.

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED] v. Commissioner, T.C. Docket No.

This refers to your request for technical advice dated August 17, 1988, on payment procedures for litigation cost awards under I.R.C. § 7430.

ISSUE

Whether the present procedure of making a check in payment of a litigation cost award under section 7430 payable to the taxpayer and sending it to the taxpayer in care of the taxpayer's counsel at counsel's address should be followed when there is a possible fee dispute. 7430-0000

CONCLUSION

The above procedure should be followed because it is designed to prevent the Service from being caught in the middle of a fee dispute between petitioners and their attorney.

FACTS

A stipulated decision was recently entered in the Tax Court involving a litigation cost award under section 7430. Both petitioners and petitioners' counsel have requested the Houston District Counsel attorney handling the case to send the check to their respective addresses. Your office notes its concern that it not be caught in the middle of a fee dispute between the petitioners and their attorney.

ANALYSIS

The payment procedure presently followed under Chief Counsel Notice N(35)800-001 dated July 23, 1987, regarding payment and reporting procedures for litigation cost awards under section 7430 require district counsel offices to prepare an award data sheet and send the data sheet with a copy of the decision document to the National Office, attention: Branch

08762

No. 1. Essential information is transcribed from the award data sheet to a National Office award data sheet and transmitted under a cover letter to the General Accounting Office which supervises the General Judgement Fund out of which claims recovered against the United States Government are paid. Our cover letter requests that the check in payment of the litigation cost award be made payable to the taxpayer and sent to him in care of the taxpayer's counsel at counsel's address. Our cover letter to GAO is patterned on Department of Justice procedures for paying Equal Access to Justice Act awards and section 7430 awards in district court cases. These procedures were adopted to prevent the Department of Justice from being drawn into fee disputes between taxpayers and their counsel.

The facts your office has outlined in this case strongly suggest that following the present procedure is in the best interests of the Government. Therefore, in the absence of some action by the taxpayers or their counsel which would legally compel the Service to deviate from this procedure in this case, we intend to follow the above described procedures in this case.

MARLENE GROSS

By:

Gerald M. Horan
GERALD M. HORAN
Senior Technician Reviewer
Branch No. 1
(Tax Litigation)